

GRS IX-5]

Previous references

(1923.
me)

File No 71-23
Serial Nos 1, 2, 6

Later references

Preserve

GENERAL AND REVENUE SECRETARIAT

Serial

Part B for

Jamunget

SUBJECT

Suits filed against municipalities in
the state

7) G.O. no 25280 of 9/1/24 To the Secy
City and Muzore, In the matter of the above
subjected by the Municipalities, which are
noted, attention of the Secy, as the remarks of
the Judge of the Court in the concluding
para of the Judgment and request him to
make more efficient arrangements and read
for the Council of Municipal Prosecution

Minister
2/2/24

No
ENC

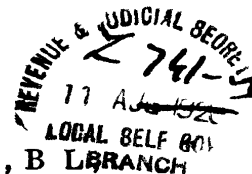
15-
16
5

6851

OFFICE OF THE PRESIDENT,
CITY MUNICIPAL COUNCIL, MYSORE
Dated 8th August 1923

FROM,

RAJASABHABHUSHANA DIWAN BAHADUR,
C SRIKANTESVARA AIYAR, B A, B L BRANCH
PRESIDENT, CITY MUNICIPAL COUNCIL,
MYSORE



To,

T.E. Jayaram Iyer, Esquire, B A, B L,
Secretary to the Government of His Highness
the Maharaja of Mysore, (Revenue Department)
Bangalore

me 71-23-1

SIR,

I have the honour to forward herewith the records (as per pherist) of a case in which one Tippoo Sheriff who was prosecuted before the Bench of Magistrates in the Mysore City for having built a wall and encroached upon Trust Board land in contravention of the provisions of Sections 96 and 122 of the Mysore Municipal Regulation was acquitted by the said Bench of Magistrates on the ground that the prosecution was barred by limitation under the proviso to Section 161 of the Municipal Regulation

As the decision of the Court on the question of limitation was based on erroneous conception, a reference was made to the Government Advocate in my letter No 31 dated 19th July 1923 to move the Government for sanction to prefer an appeal against the order of acquittal under Section 417 C.P. and filing the appeal in due course

In reply, the Government Advocate states in his letter No 73 dated 3rd August 1923, that the decision of Court is incorrect and may be appealed against

10 AUG 1923
Mr Y N

2.

W.H.

The findings of the Court on facts are all against the accused, and the judgment is quite unique, and if not appealed against will form a dangerous precedent and afford a premium for persons to act in open defiance of Municipal Regulations and Bye-laws, and to encroach upon public properties. I have therefore to request that you may be so good as to move the Government to accord their sanction to file an appeal against the said decision of the Bench of Magistrates and instruct the Government Advocate to file the appeal in time. The date of judgment being 27th April 1923, favour of very early orders is solicited.

I have the honour to be,

Sir,

Your most obedient servant,

A. K. G. G. G.

President.

SSR.

SS

W.H. is not available

Yh

15.8.23

CS
13 8

*Per Sec) Perhaps for the E
draft immediately ref 17/8/23*

A typed note is sent

Yh
12 8 23

CS
17 8 23

*Per Sec) A draft is put up
The period allowed*

By-law for filing an
appeal against city order
in 10 to 15 months

741

Order at once yes
16 & 15

SL2.

To

The Lord Advocate

" President City and
Magistrate

" Comptroller

No L 154-13 9/8 & 23

Ref St 1 sanctions the institution
of the appeal & authorizes the Lord
Advocate to take necessary action

Sign the matter & call for a copy of
the chief court decision.

3468-
4Serial
No

6

From the Registrar, Chief Court
No 397 dated 18th Dec 23.

Forwards copy of judgment
in criminal appeal no 24 of
1923-24

Kind reference is invited to the
concluding para of the judgment
regarding the unsatisfactory
manner in which the prosecution
was conducted. The judges remark
that this is the 2nd of cases not
satisfactorily handled. There is no
information in the office as to
which was the 1st case in which
the judges had to remark
adversely.

2 Draft 40 Bura for approval or

25/12/23
21/12/23
for orders

CEB
25/12/23

1d & d Secretary

Drafting perhaps to
approve

Dewan - 2/11 -

84
25/12

84
31/12

DEWAN'S OFFICE

Recd. on DEC 29 1924

Reg. No. 440

Subs
5

Serial
No.

Issue ~~CBB~~
87 12-23

7 To

The President City and Mysore
No L 5290 2791 24

Draws attention to the remarks of the Judges
in their judgment in respect of the appeal
against the order of the Bench of Mr. Justice
acquitting one G. P. Sulten who
proceeded for having encroached upon
area and states that more effective
arrangements are to be made for
conduct of the prosecutions

B

Proceedings of the Government of H.H
the Maharaja of Mysore.

Read -

Letter No.15 dated the 8th August 1923
from the President, City Municipal Council,
Mysore, forwarding the records of a case in
which one Tippoo Sheriff, who was prosecuted
before the Bench of Magistrates in the ---
Mysore City for having built a wall and en-
croached upon Trust Board land in contraven-
tion of the provisions of Sections 96 and
122 of the Mysore Municipal Regulation, was
acquitted by the said Bench of Magistrates
on the ground that the prosecution was ---
barred by limitation under the Proviso to --
Section 161 of the Municipal Regulation, ^{and} re-
porting that the Government Advocate is of
opinion that the said decision on the ques-
tion of limitation is erroneous and request-
ing that sanction may be accorded to prefer
an appeal against the said decision and that
the Government Advocate may be instructed
to file the appeal in time

Order--No

1511-13

Dated Bangalore, the 18th August 1923

Govt are pleased to sanction the -
institution of an appeal in the Chief Court
against the order of acquittal The Govt
Advocate will take the necessary action in
the matter immediately

2. A copy of the decision of the Chief
Court on the appeal may be submitted in due
course for the information of Government

The Govt. Advocate in Mysore.

" Presdt. City Ml .Cl. Mysore.

" Comptroller to Govt.

Secy. to Government,

1273

CHIEF COURT OF MYSORE

Bangalore, dated 18th December 23.

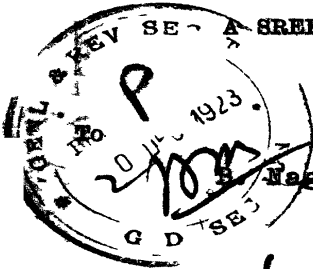
Magraphic } - JUSTICE
Address. }

25078

to 397
62

FROM

SREENIVASARAGAVACHARI, Esq., B.A. B.L.,
Registrar, Chief Court of Mysore.



Nagappa, Esq., B. A.,
Secretary to Government,
Local and Legislative Departments,
B a n g a l o r e

ml 71-23-6

Sir,

[Handwritten signature]
I am directed to forward herewith for the information of Government copy of judgment in Criminal Appeal No.

4 of 1923-24.

I have the honour to be,

Sir,

Your most obedient servant,

[Handwritten signature]
in Registrar

81

IN THE CHIEF COURT OF MYSORE AT MANGALORE.
Thursday, the 13th day of December 1923.

Present,

Mr. Justice R. H. Plumer,
and
Mr. Justice E. Subbanna

Criminal Appeal No. 24 of 1923 - 24.

The Government of Mysore . . . Complainant. . . APPELLANT

Vs.

Mahomed Tippu Sheriff . . . Accused . . . RESPONDENT

**Appeal against the order of acquittal passed by
the Bench of Honorary Magistrates, Mysore City, in Criminal
Case No. 28 of 1922-23 Summary No. 325/1922-23**

**this appeal coming on for hearing on Wednesday,
the 21st day of November 1923, the court delivered the
following :-**

J u d g m e n t

**This appeal is brought by the Government from
the sentence of acquittal passed by the Bench of Honorary
Magistrates at Mysore in a prosecution launched by the
Municipality against the respondent Tippu Sheriff.**

sections 95 and 122 of the Municipal Regulation - Regulation No. VII of 1906. The facts alleged against him in the course of the evidence were that he encroached upon land belonging to the Mysore City Improvement Trust Board and erected a wall or walls without obtaining a license to do so. The Bench of Magistrates found the facts in favour of the prosecution but acquitted the accused on the ground that the prosecution was barred by time apparently meaning that it was instituted after the lapse of six months prescribed in Section 161 of the said Regulation.

The complaint petition is very disappointing as it does not mention the date on which the offences were committed or any other detail except that the accused had failed to comply with a notice "to remove the encroachment of constructing a wall on Trust land". There is a notice in the file dated 3rd January 1922 bearing what purports to be the accused's signature above the date 7-1-1922 and there is some evidence which we may believe and which shows that he was served with the notice on that date - the complaint appears to have been received on 7th July 1922. But except what we find in the evidence of Mr. Rosario we have nothing to show that the accused proceeded with the construction of the wall after the notice was served upon him. And it is difficult to say that in this summons case the accused was justly called upon to meet a case which was not set out in the complaint petition where, to say once more, it was the failure to remove a wall that was made the foundation for the prosecution rather than the construction and finishing of it after the notice was served. We cannot lay too much emphasis on the importance of the accuracy of the charge in a criminal case.

As regards the merits of the case we have to note that the prosecution has left many points in doubt,

great deal more care was necessary in the conduct of it than it has received. We read in the evidence of Byata Rao who presented the complaint that the portion of land encroached upon by the accused was shown in red on the sketch Exhibit A (this appears to have been afterwards changed in Exhibit P.1), but on studying this we find that a plot shown as the "encroachment" is enclosed by red lines on the North and west and by blue lines on the east and south. If the red lines represent the walls that the accused put up it is difficult to say that he encroached upon any land which the Trust Board acquired from prosecution witness No. 1 as is the case for the prosecution. The learned Government Advocate was unable to say where the walls were put up by the accused, - on the lines marked red or blue. We find certain portions shaded red on this sketch but it does not appear from the records that it is the case for the prosecution that they are in dispute now. Byata Rao expressly says that it is the portion measuring 21' x 11' that is in dispute and this has apparently no reference to the portions shaded red. Assuming that it is the piece of land shown as the encroachment on the sketch Exhibit P.1 that is the subject of this case it is claimed by the accused as belonging to his premises No. 3076 whereas the Trust Board claims to have acquired it along with premises No. 3075 from Mr. Mahomed Jaffar Ali Khan, prosecution witness No. 1. To prove that it belonged to this gentleman he is apparently the only witness (his evidence too is not particularly clear on the point) the other two witnesses examined for the prosecution basing their knowledge upon the records connected with the acquisition proceedings. We have material before us to show that premises No. 3075 belonged to one Mahomed Chassin Ali Khan in 1900 and sometime after September 1900, and before 1905 and also

afterwards inherited by the first witness for the prosecution. The records summoned from the Munsiff's Court (and improperly marked ~~as~~ ~~an~~ ~~map~~ as Exhibit D. 1) show that premises No. 3075 were a vacant site even in September 1920. Exhibit E. 7 shows that by 15-11-1921 Mahomed Ahasim Alli Aham was dead and the property No. 3075 was a vacant site. It is difficult to place much reliance in such circumstances on the corroborated statement of prosecution witness No. 1 that the piece of land in question belonged to premises No. 3075 and not to the adjoining No. 3076. There is evidence to show that there are some stump walls near about that bit of land but it is not clear where those walls are and whether they are such as to show that the bit in question should have belonged to premises No. 3075.

The learned Government Advocate attempted to argue that even if it belonged to No. 3076 the acquisition proceedings give a valid indefeasible title to the Trust Board and the accused should have appeared before the Acquisition Officer and pressed forward his claims. But no authority was cited in support of this proposition and we think it enough to say in this case that the prosecution is not based on that ground and it has to stand or fail on the basis on which it was founded in the lower court, viz., that the site claimed belonged to premises No. 3075 and the Trust Board derived title to it on account of the acquisition of those premises.

We do not therefore consider that the case is one in which this court can interfere to set aside the acquittal and either convict the accused or order a retrial after the lapse of such a long time. This appeal is dismissed.

We cannot close this judgment without remarking that the Mysore Municipality must recognise that such cases are important and should be handled with care by skilled prosecutors.

The way in which the complaint is drawn up and the whole case is conducted does not reflect much credit upon the prosecutors and this is at least the second case that has come to the notice of this court in which there was reason to notice the unsatisfactory way the municipal presentations are conducted. It is hoped that better arrangements will be made for their conduct in future.

(Signed) R B Plumer

J U D G E.

(Signed) B Lubbock

J U D G E.

Copy

M. M. M. M. M.

~~By~~ Registrar

At

SUBJECT

Diary No of letter replied to 3465

General and Revenue Secretariat

, the 192

Date of issue

9/1/24

Signed by

M. C. C.

May this be

- i Printed ?
- ii treated as a standing order ?
- iii published in the Gazette
English Part ?
- v translated ?
- v placed at the disposal of the press
- vi published in the Gazette
Kannada Part ?

PLS 9/1-

Section *M*

File No 71-23

Serial No 7

Proceedings of the Government of
His Highness the Maharaja of Mysore

Read—

Letter no 397 dated 18-12-23

from the Registrar chief court,
~~forwarding~~ *forwarding* copy of judgment
in criminal appeal no
24 of 1923-24 ordered to
be instituted in G. O. no

L 1511-13 M 71-23-2

~~Order Thereon~~ No dated 18-8-23

against the order of the
Board of Magistrates in the
Mysore city- acquitting
one Zippoo Sheriff who

prosecuted for having built
a wall and encroached upon
Trust Board Land

Order no :- 15280 Enclure

The attention of the
President of the Mysore City
Municipal Council will be drawn
to the remarks of the Judges
in the concluding para of
their judgment and he is
requested to see that more
~~satisfactory~~^{efficient} arrangements are
made for conduct of Municipal
prosecutions.

CS
25/12 84
HK S L & L Sug
21/1/23

The President, Mysore City M.C.
with copy of the concluding
para of the judgment.

11/1
H. N.

List of enclosures

Copied by

Examined by

